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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/068,285	02/05/2002	Vince M. Giampa	25581.002	9743

7590 08/12/2004

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EXAMINER

TOOMER, CEPHIA D

ART UNIT	PAPER NUMBER
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1714

DATE MAILED: 08/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/068,285	<b>Applicant(s)</b> GIAMPA ET AL.	
	<b>Examiner</b> Cephia D. Toomer	<b>Art Unit</b> 1714	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 July 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3-16 and 18-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18-27 is/are allowed.
- 6) ☒ Claim(s) 3-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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### DETAILED ACTION

1. This Office action is in response to the amendment filed July 26, 2004 in which claims 1, 2 and 17 were canceled. Applicant's amendment has overcome the rejection set forth in the advisory action of July 8, 2004 and the office action of April 27, 2004.
2. The indicated allowability of claims 3-16 and 18-27 is withdrawn in view of the newly discovered reference(s) to Wilson (US 6,589,442). Rejections based on the newly cited reference(s) follow.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson (US 6,589,442).

Wilson teaches a dust control composition comprising 5-95% crude tall oil and 5-95% vegetable oil (tri-glyceride), said oil mixture being emulsified in a range of ratios of from about 40:60 to about 25:75 oil mixture to water with up to about 4% to 6% by weight of the oil mixture of a base (NaOH or KOH). The base is used to partially neutralize or saponify the oil mixture. The tall oil is made up of a range of C<sub>18</sub> – C<sub>24</sub> long chain fatty acids (see col. 2, lines 22-29; col. 3, lines 40-59). The vegetable oil may be canola, corn, soybean, etc. (see col. 4, lines 27-36). Wilson teaches that one

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skilled in the art would readily comprehend the extent of neutralization required to emulsify the oil (see col. 3, lines 60-63). The pH of the composition is from about 6-8 and the viscosity is about 120 cp @ 70 °F (21.1 °C) (see col. 4, lines 45-50). Wilson teaches the limitations of the claims other than the differences that are discussed below.

In the first aspect, Wilson differs from the claims in that he does not specifically teach Applicant's intended use. However, no patentable weight is given to claims that are directed a composition per se.

In the second aspect, Wilson differs from the claims in that he does not specifically teach an individual surfactant (claim 1). However, Wilson teaches that the base neutralizes and saponifies the oils and emulsifies the oil mixture. Therefore, the neutralized and saponified oil form soaps that function as surfactants.

In the third aspect, Wilson differs from the claims in that he does not teach the sulfur content, the closed cup flash point and storage temperature of the composition (see claims 12-14). However, since Wilson teaches a comparable or similar composition, it would be reasonable to expect that the composition would possess the claimed physical properties.

In the fourth aspect, Wilson differs from the claims in that he does not specifically teach that the composition contains an anionic soap or that the surfactant is derived from the tall oil. However, as discussed above, Wilson teaches that the oils (vegetable and tall) are partially neutralized and saponified. The neutralized fats and carboxylate salts that are formed are known anionic surfactants.

5. Claims 18-27 are allowable because the prior art fails to teach or

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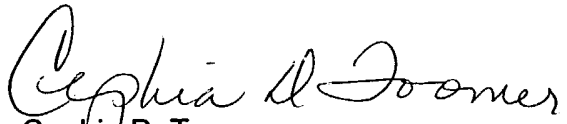
suggest the method of producing a chemical change agent comprising glyceride, surfactant, and water in combination with heated tall oil. The prior art also fails to teaches or suggest a solid fuel treated with an oil-in-water emulsion of a glyceride, a surfactant and water or an oil-in water emulsion of tall oil, a glyceride, a surfactant and water.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cephia D. Toomer whose telephone number is 571-272-1126. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 571-272-1119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Cephia D. Toomer  
Primary Examiner  
Art Unit 1714

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